***THE HONOURABLE MR. JUSTICE C.Y.SOMAYAJULU**

+W.P.No.4530 of 1996

% 12.9.2005

Sakibanda Varada Reddy

….Appellants..

VS.

$ The dJoint Collector – cum – Settlement Officer, Chittoor and another.

Respondents

! COUNSEL FOR THE APPELLANTS:

Sri R.Radha Krishna Reddy ,

^ COUNSEL FOR THE RESPONDENTS: --- G.P.for Revenue.,

< Gist:

> Head Note:

? CITATIONS:

COMPUTER NO. 58.

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

On Monday, the twelfth day of September,

two thousand and five.

W.P.No.4530 of 1996

Sakibanda Varada Reddy, son of Ranga Reddy,

R/o Eguvapalli, H/o Nellimanda village, Somala

Mandal, Chittoor District.

Petitioner.

And:

The Joint Collector-cum-Settlement Officer, Chittoor,

and another.

Respondents.

O R D E R:

Alleging that the Zamindar of Punganur granted patta in his name in respect of Ac.0.80 cents in S.No.129 and Ac.0.20 cents in S.No.119 of Eguvapalli village, on 15.4.1943 and that after Punganur Estate was taken over by the Government under the provisions of the Estate Abolition Act 1948 ('the Act'), since the said land was wrongly classified as *poromboke* land in the revenue records, he, who has been continuing in possession of the aforesaid one acre of land, had made an application under Section 11(a) of the Act to the Settlement Officer on 20.10.1986 in RC.F.80/87 for grant of Ryotwari patta in respect of that land, and when the Joint Collector and Mandal Revenue Officer (respondents) along with others tried to interfere with his possession over the tamarind trees in S.No.129, he filed O.S.No.89 of 1987, on the file of the Court of Principal District Munsif, Punganur for declaration of his title and injunction and that the said suit was partly decreed on 12.6.1995 granting an injunction in his favour during the pendency of the proceedings before the Settlement Officer, Nellore, only and dismissing the relief of declaration of title as it can only be decided by the Settlement Officer, and after the office of the Settlement Officer was abolished in or around 1990, the cases pending before the Settlement Officer were transferred to the Joint Collector (1st respondent) who was also vested with the powers of Settlement Officer and that he, who was under an impression that his case also was transferred to the 1st respondent, having not received a communication from his counsel went to Nellore and filed a petition for grant of ryotwari patta in respect of the said land before the 1st respondent, as per the advice of his counsel at Punganur, and that the first respondent informed him vide his proceedings dated 21.1.1996 that inasmuch as his petition for grant of patta was dismissed by the Settlement Officer, for

default on 22.7.1987, his fresh application for grant of patta cannot be entertained and since he came to know about the dismissal of his petition for grant of patta by the Settlement Officer, Nellore, for default on 22.7.1987, only through the proceedings of the first respondent dated 21.1.1996, petitioner filed this petition to set aside the order passed by the Settlement Officer on 22.7.1987, dismissing his petition for default with a consequential direction to the 1st respondent to dispose of his application under Section 11d(a) of the Act, on merits.

2) The contention of the learned counsel for the petitioner is that since petitioner did not receive any communication from the then Settlement Officer or 1st respondent or his counsel regarding the hearing of the case and since the petitioner came to know about the dismissal of his case for default by the Settlement Officer only through the communication dated 21.1.1996, issued by 1st respondent, the order of the dismissal of the petition for grant of patta for default may be set aside and petitioner may be given an opportunity to contest the case on merits, because the order of dismissal was passed due to the absence of the counsel for petitioner, about whose death petitioner is not aware of.

3) The contention of the learned Assistant Government Pleader is that since the writ petitioner died on 8.9.2000 and since his legal representatives are not brought on record the writ petition became infructuous and in any event since the dismissal was due to laches on the part of the petitioner, he is not entitled to any relief.

4) Since the death certificate of the petitioner is not filed by the learned Assistant Government Pleader, deeming that the petitioner is alive I wish to dispose of the case on merits.

5) Admittedly, petitioner filed O.S.No.89 of 1987, seeking declaration of his title and an injunction restraining the respondents and others from interfering with his possession over the tamarind trees in S.No.129, which was partly decreed

on 12.6.1995, granting an injunction till the disposal of the proceedings before the Settlement Officer only and negativing the prayer for declaration of title. From the averments in para-5 of the affidavit of the petitioner, filed in support of this petition, it is clear that even in the year 1990 he was very much aware of the fact that the State Government abolished the post of Settlement Officer, Nellore, and transferred the cases pending before the Settlement Officer to the 1st respondent i.e. the Joint Collector after conferring the power of Settlement Officer under the provisions of the Act on him. So as an ordinary prudent litigant he would, and ought to, have made enquiries about the posting of his case and the date of hearing of his case, because judicial notice can be taken of the fact that whenever cases are transferred from one Court or Tribunal to another Court or Tribunal, notice of such transfer would be given to the parties concerned or to their counsel. According to the averments in the affidavit of the petitioner filed in support of this petition, the application for patta before the Settlement Officer was filed on 20.10.1986. The affidavit of the petitioner is silent about the date or year of death of the counsel through whom he filed the petition before the Settlement Officer. Even assuming that the contention of the petitioner that he did not receive any communication from his advocate from 1986 onwards, is true, the same is not and cannot be an excuse because petitioner failed to explain why he did not approach his counsel for finding out about the fate of his case, and the steps he has taken for due prosecution of his case from 1986 onwards, because by entrusting a brief to his counsel a litigant is not absolved of his duty to find out the stage and fate of his case from his counsel periodically. If a litigant, without caring to find out about the progress of his case for years together, in spite of his not receiving a communication from his counsel, keeps quiet and does not bother to contact his counsel, he has to suffer the consequences therefore, but cannot make his own laches a ground for setting at naught the orders passed by Courts or Tribunals, without properly explaining the reasons for his sleeping over the matter for several years. In his petition filed before the first respondent in 1995, copy of which is filed along with this petition, petitioner clearly stated that when he approached the section for issuance of a pendency certificate, he was informed that his case was not transferred to the first respondent from the Settlement Officer and so he filed a fresh petition for grant of patta. When in 1995 itself he was informed by the employees in the office of the first

respondent that his case was not transferred from Settlement Officer to the office of the 1st respondent, petitioner, as an ordinary prudent litigant should have found out the reasons for non-transfer of his case, either from the office of the first respondent or from the office of the advocate at Nellore. Had he be that diligent, he would have known that his case was dismissed for default by the Settlement Officer, Nellore, even in 1987. Without making efforts to find out the reasons for non-transfer of his case to 1st respondent, petitioner choosing to file a fresh petition, ostensibly under a legal advise from his counsel at Punganur, is but a futile attempt to cover his earlier laches because there cannot be two applications for the same relief at two different places, i.e. he could not have filed a second application for grant of patta before the 1st respondent, while assuming that his earlier application for patta filed before the Settlement Officer, Nellore is pending. Before advising the petitioner to file a fresh application, the advocate of the petitioner at Punganur would have asked him to find out the stage of his case before the Settlement Officer. Thus petitioner, obviously, is trying to make use of the order of rejection of his second application, passed by the first respondent, a ruse for feigning ignorance of his earlier knowledge of the order of dismissal of his application for default passed by the Settlement Officer, Nellore.

6) Copy of the decree in O.S.No.89 of 1987 produced by the petitioner shows that the cause of action for the suit arose about two days prior to the filing of the suit on 6.2.1987 i.e., when defendants 3 to 6 therein attempted to harvest the tamarind usufruct from the trees situated in Ac.0.75 cents in S.No.129 in Nellimanda village. So, it is clear that the State of Andhra Pradesh, represented by the District Collector and the Mandal Revenue Officer, i.e. defendants 1 and 2 in that suit, are only pro forma parties to that suit. Be that as it may the said suit relates to land at Nellimanda village but the petition filed by the petitioner before the Settlement Officer is in respect of the lands at Eguvapalli village. There is nothing on record to show that Nellimanda and Eguvapalli are one and the same village. So, the decree in O.S.No.89 of 1987 is of no help in deciding this petition.

7) Since the laches on the part of the petitioner in conducting his case before the Settlement Officer, Nellore, are not explained in his affidavit, I find no grounds to grant any of the reliefs sought in this petition. Hence, the writ petition is dismissed with costs.

JUSTICE C.Y.SOMAYAJULU

12th September 2005.

BCS

L.R. Copy to be marked.